

Private foundation; disqualified person; member of state legislature. An elected member of a state legislature who receives a salary of less than \$15,000 per year and an expense allowance of a fixed amount for the use of which no accounting need be made to the state, which together amount to more than \$15,000 per year, is a disqualified person within the meaning of section 4946(a) of the Code by virtue of being a government official described in section 4946(c)(5).

Advice has been requested whether the individual described below is a disqualified person within the meaning of section 4946(a) of the Internal Revenue Code of 1954 by virtue of being a government official described in section 4946(c)(5).

The individual is an elected member of a state legislature. As such, the individual receives a salary from the state in an amount less than \$15,000 per year as well as an expense allowance that, when added to the salary, results in a total amount of more than \$15,000 per year. The expense allowance is a fixed amount given to each legislator each year regardless of actual expenses. There is no restriction upon its use and no requirement that an accounting for its use be made to the state.

Section 4946(a)(1)(I) of the Code includes government officials as defined in section 4946(c) in the definition of the term 'disqualified person.'

Section 4946(c)(5) of the Code includes in the term 'government official' an individual who holds an elective or appointive public office in the executive, legislative, or judicial branch of the government of a state and who receives gross compensation therefrom at an annual rate of \$15,000 or more.

The term 'gross compensation,' as used in section 4946(c)(5) of the Code, refers to all receipts attributable to public office that are includable in gross income for Federal income tax purposes. Under the circumstances described above, both the salary and the expense allowance are includable in the individual's gross income. See *Walter I. Geer v. C.I.R.*, 28 T.C. 994 (1957).

Accordingly, since the individual's gross compensation from public office is greater than \$15,000 per year, the individual described above is a disqualified person within the meaning of section 4946(a) of the Code by virtue of being a government official described in section 4946(c)(5).